

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VELETTA COLEMAN,

Plaintiff,

V.

SARAH-RENEE HOLLINGSWORTH
GARNER,

Defendant.

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No. 3:20-cv-2800-B-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Veletta Coleman filed a *pro se* lawsuit in this district in January 2018 against Defendant Sarah-Renee Hollingsworth Garner and others based on a January 2016 automobile accident; Coleman’s lawsuit was dismissed for lack of subject matter jurisdiction. *See Coleman v. Garner*, No. 3:18-cv-121-G-BH, 2020 WL 3883575 (N.D. Tex. Apr. 22, 2020), *rec. accepted*, 2020 WL 3872218 (N.D. Tex. July 8, 2020) (“*Coleman I*”).

Coleman now returns to this Court with another *pro se* lawsuit against Garner based on the same accident, making conclusory allegations about this Court’s subject matter jurisdiction but providing no facts to show that there is either federal question jurisdiction or complete diversity. *Cf.* Dkt. No. 3 at 1 (alleging that Garner is a citizen of Texas and providing that Coleman’s own address is in Dallas, Texas). Coleman further identifies *Coleman I* as a related case. *See id.* at 10.

This action has been referred to the undersigned United States magistrate judge for screening under 28 U.S.C. § 636(b) and a standing order of reference from

United States District Judge Jane J. Boyle.

In *Coleman I*, the court determined that it lacked subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1332, the only statutory provisions that could possibly provide subject matter jurisdiction over this case. The Court's subject matter over Coleman's current assertions has therefore been adjudicated, and she cannot now "command a second consideration of the same jurisdictional claims." *Boone v. Kurtz*, 617 F.2d 435, 436 (5th Cir. 1980) (per curiam) ("Although the dismissal of a complaint for lack of jurisdiction does not adjudicate the merit so as to make the case res judicata on the substance of the asserted claim, it does adjudicate the court's jurisdiction, and a second complaint cannot command a second consideration of the same jurisdictional claims." (collecting cases)); accord *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 469 (5th Cir. 2013) ("[T]he district court's judgment was on the merits because the district court's decision in *Comer I* adjudicated the jurisdictional issues of standing and justiciability, and 'res judicata appl[ies] to jurisdictional determinations.'" (quoting *Frank C. Minvielle LLC v. Atl. Ref. Co.*, 337 F. App'x 429, 435 (5th Cir. 2009) (per curiam); citing *Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 534 (5th Cir. 1978))).

The Court should therefore dismiss this action for this reason alone.

Alternatively, Coleman has not established subject matter jurisdiction in the current complaint.

"Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 568 U.S. 251, 256 (2013)

(quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); see also *Bowles v. Russell*, 551 U.S. 205, 212 (2007) (“Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.”); *Stockman v. Fed. Election Comm’n*, 138 F.3d 144, 151 (5th Cir. 1998) (“Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims.”). They must therefore “presume that a suit lies outside this limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum.” *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). Correspondingly, all federal courts have an independent duty to examine their own subject matter jurisdiction. See *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583-84 (1999) (“Subject-matter limitations ... keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level.” (citations omitted)).

By filing this lawsuit in federal court, Coleman again took on the burden to establish federal jurisdiction. See *Butler v. Dallas Area Rapid Transit*, 762 F. App’x 193, 194 (5th Cir. 2019) (per curiam) (“[A]ssertions [that] are conclusory [] are insufficient to support [an] attempt to establish subject-matter jurisdiction.” (citing *Evans v. Dillard Univ.*, 672 F. App’x 505, 505-06 (5th Cir. 2017) (per cuiam); *Jeanmarie v. United States*, 242 F.3d 600, 602 (5th Cir. 2001))). And if she does not establish federal jurisdiction, this lawsuit, like *Coleman I*, must be dismissed. See FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-

matter jurisdiction, the court must dismiss the action.”).

Because federal jurisdiction is not assumed, “the basis upon which jurisdiction depends must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference.” *Getty Oil Corp. v. Ins. Co. of N.A.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (citing *Ill. Cent. Gulf R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 & n.2 (5th Cir. 1983)); *see also MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019) (“Because federal courts have limited jurisdiction, parties must make ‘clear, distinct, and precise affirmative jurisdictional allegations’ in their pleadings.” (quoting *Getty Oil*, 841 F.2d at 1259)).

Under their limited jurisdiction, federal courts generally may only hear a case if it involves a question of federal law or where diversity of citizenship exists between the parties. *See* 28 U.S.C. §§ 1331, 1332.

Federal question jurisdiction under Section 1331 “exists when ‘a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir. 2009) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983)). “A federal question exists ‘if there appears on the face of the complaint some substantial, disputed question of federal law.’” *In re Hot-Hed Inc.*, 477 F.3d 320, 323 (5th Cir. 2007) (quoting *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995)).

In diversity cases, each plaintiff’s citizenship must be diverse from each

defendant's citizenship, and the amount in controversy must exceed \$75,000. *See* 28 U.S.C. § 1332(a), (b). "The basis for diversity jurisdiction must be 'distinctly and affirmatively alleged.'" *Dos Santos v. Belmere Ltd. P'ship*, 516 F. App'x 401, 403 (5th Cir. 2013) (per curiam) (quoting *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 (5th Cir. 2009)). And the United States Court of Appeals for the Fifth Circuit "has stated that a 'failure to adequately allege the basis for diversity jurisdiction mandates dismissal.'" *Id.* (quoting *Stafford v. Mobil Oil Corp.*, 945 F.2d 803, 805 (5th Cir. 1991)).

Coleman's complaint does not meet these standards. For example, she alleges that Garner deprived her of rights under color of law. *See* Dkt. No. 3 at 1. But she pleads no facts to show that Garner acted under "color of state law." And, where a plaintiff "does not allege facts demonstrating that [a defendant] acted under color of state law," she also fails "to plead and establish subject-matter jurisdiction based on the existence of a federal question." *E.g.*, *Mitchell v. Clinkscapes*, 253 F. App'x 339, 340 (5th Cir. 2007) (per curiam) ("The complaint contains no allegation that Mitchell and Clinkscapes are citizens of different states; thus, Mitchell failed to plead and establish subject-matter jurisdiction based on the existence of complete diversity. Additionally, although Mitchell argues that Clinkscapes is liable under 42 U.S.C. § 1983, Mitchell does not allege facts demonstrating that Clinkscapes acted under color of state law; thus, Mitchell failed to plead and establish subject-matter jurisdiction based on the existence of a federal question. [And t]he district court was required to dismiss the complaint." (citations omitted)).

And, as provided previously, Coleman has not established complete diversity,

to invoke this Court's jurisdiction under Section 1332.

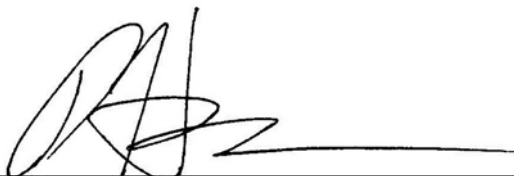
In sum, the Court should dismiss this case without prejudice for lack of subject matter jurisdiction.

Recommendation

The Court should *sua sponte* dismiss this action for lack of subject matter jurisdiction.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: September 10, 2020

A handwritten signature in black ink, appearing to read 'D. Horan', is written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE